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Important Exceptions and Special Circumstances that Occur under the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program: – The third in a series of articles on the new DMEPOS competitive bidding program.

Note: This article is impacted by the Medicare Improvements for Patients and Providers Act of 2008, which was enacted on July 15, 2008. That legislation delays the implementation of the DMEPOS competitive bidding program until 2009 and makes other changes to the program. This article will be further revised and/or replaced as more details of the modified program are available.

Provider Types Affected

The following providers may be affected by this program:

- Physicians and other treating practitioners who are Medicare enrolled DMEPOS suppliers;
- Physicians and others who order or refer DMEPOS items or services for their patients;
- Skilled nursing facilities (SNFs) and nursing facilities (NFs); and
- Physical therapists and occupational therapists in private practice who are Medicare enrolled DMEPOS suppliers.

Many Medicare Fee-for-Service (FFS) providers may be in a position of ordering, referring, or supplying DMEPOS to a Medicare beneficiary. This includes physicians (including podiatric physicians), other treating practitioners (nurse practitioners, physician assistants, and clinical nurse specialists), physical and occupational therapists, and institutional providers (especially skilled nursing facilities and their social workers or care coordinators, hospitals and their discharge planners, home health agencies and pharmacists).

Provider Action Needed

Understand these special program rules that may affect you. This article is especially important if you are a Medicare-enrolled DMEPOS supplier of items

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governed by the new program, even if you are not located in a competitive bidding area (CBA). It is important to understand that the program affects any beneficiaries who permanently reside in or travel to CBAs. Some program requirements apply to beneficiaries who reside in CBAs even if these beneficiaries travel outside their CBAs. Thus, it is important for you to be familiar with this program.

While the first phase of the competitive bidding program only affects ten CBAs in the country as of July 1, 2008, the second phase will expand to 70 additional geographic areas in 2009. See MLN article SE0805 for information about CBAs and items governed by this new program and for information about how the program applies to traveling beneficiaries.

Background

MLN Matters article SE0805 that is entitled, "Overview of New Medicare Competitive Bidding Program for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)," which is available at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0805.pdf> on the CMS website, summarizes information on competitive bidding that may impact your patients. Article SE0805 contains the list of competitive bidding areas for the first phase of competitive bidding as well as a list of the DMEPOS product categories that are included in the program's initial implementation.

MLN Matters article SE0806 that is entitled, "Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program: Grandfathering, Repair and Replacement, Mail Order Diabetic Supplies and Advanced Beneficiary Notices (ABNs)," which is available at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0806.pdf> on the CMS website, provides an overview of the rules regarding grandfathered suppliers, repair and replacement of beneficiary-owned equipment, mail order diabetic supplies under the program, and ABNs.

In this, the third in a series of articles on the new DMEPOS competitive bidding program, we provide information on some special circumstances and exceptions of particular interest to physicians and other treating practitioners, SNFs and NFs, and physical and occupational therapists in independent practice.

Note: It is important to note that the Competitive Bidding Program does not affect your patients' choice of physician or treating practitioner.

In using this series of DMEPOS articles, remember that in most instances, beneficiaries maintaining a permanent residence in one of the Competitive Bidding Areas (CBAs) must obtain competitive bidding items from a contract supplier. There are also program requirements that apply to beneficiaries who reside in

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CBAs but travel outside of those CBAs and to beneficiaries who do not live in CBAs but travel to them.

Physicians and Other Treating Practitioners Who are Enrolled Medicare DMEPOS Suppliers

Medicare physicians and treating practitioners who have also enrolled as Medicare DMEPOS suppliers via the 855S enrollment form have the option to furnish certain types of competitively bid items to their own patients without submitting a bid or being awarded a competitive bid contract, provided the following requirements are met:

- For the first phase of the program being implemented July 1 2008, the item furnished must be a walker. In the future, the items will be limited to crutches, canes, walkers, folding manual wheelchairs, blood glucose monitors, and infusion pumps that are DME;
- The items must be furnished by the physician or treating practitioner DMEPOS supplier **to his or her own patients as part of his or her professional service; and**
- The items must be billed to a DME MAC using the DMEPOS billing number that is assigned to the physician, the treating practitioner (if possible), or a group practice to which the physician or treating practitioner has reassigned the right to receive Medicare payment.

Where the furnished item is a bid item and the beneficiary resides in a CBA, the physician or treating practitioner will be paid the single payment amount established by this program for the item. This exception does not affect the applicability of the physician self-referral (Stark law) provisions in section 1877 of the Act. All provisions of the physician self-referral law remain fully in effect.

Physicians and Other Treating Practitioners Who Prescribe Specific Brand or Mode of Delivery to Avoid an Adverse Medical Outcome

Note: Section 30.4 of Chapter 36 of the Medicare Claims Processing Manual contains the official instructions related to this provision. Of particular note are the documentation requirements of that section. The section is attached to CR6119, which is available at <http://www.cms.hhs.gov/Transmittals/downloads/R1532CP.pdf> on the CMS website.

A physician (including a podiatric physician) or treating practitioner may prescribe, in writing, a particular brand of DMEPOS bid item or mode of delivery for an item if he or she determines that the particular brand or mode of delivery would avoid an adverse medical outcome for the beneficiary. The physician or treating practitioner

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must document in the beneficiary's medical record the reason why the specific brand or mode of delivery is necessary to avoid an adverse medical outcome.

In these cases, the contract supplier under the Competitive Bidding Program must:

- Furnish the particular brand or mode of delivery as prescribed by the physician or treating practitioner;
- Consult with the physician or treating practitioner to find another appropriate brand of item or mode of delivery for the beneficiary and obtain a revised written prescription from the physician or treating practitioner; or
- Assist the beneficiary in locating a contract supplier that can furnish the particular brand of item or mode of delivery prescribed by the physician or treating practitioner.

Any change in the prescription requires a revised written prescription. A contract supplier is prohibited from submitting a claim to Medicare if it furnishes an item different from that specified in the written prescription received from the beneficiary's physician or treating practitioner.

Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs) Specialty Suppliers

Note: Section 20.5.2 of Chapter 36 of the Medicare Claims Processing Manual contains the official competitive bidding program instructions related to SNFs and NFs. That section is attached to CR5978, which is available at <http://www.cms.hhs.gov/Transmittals/downloads/R1502CP.pdf> on the CMS website.

The DMEPOS Competitive Bidding Program applies to SNFs and NFs to the extent that their residents receive competitively bid items under Medicare Part B. Unlike most suppliers, SNFs and NFs have the option to bid for, and be awarded, contracts to be "specialty suppliers" that **only furnish competitively bid items to their own residents**. SNFs and NFs that become specialty suppliers may not furnish competitively bid items and services to Medicare beneficiaries outside their facilities for purposes of Medicare payment. SNFs and NFs can also become regular contract suppliers that furnish competitively bid items to beneficiaries throughout a CBA.

If a SNF or NF is not a contract supplier (either a specialty contract supplier or a regular contract supplier), it must use a contract supplier for its CBA to furnish competitively bid items to its residents.

Physical Therapists and Occupational Therapists in Private Practice Who are Enrolled Medicare DMEPOS Suppliers

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Physical therapists and occupational therapists in private practice who are enrolled DMEPOS suppliers may eventually have the option to furnish certain types of competitively bid items to their own patients and be paid the single payment amount for such items without being contract suppliers, provided the following requirements are met:

- The items are limited to off-the-shelf (OTS) orthotics; and
- The items must be furnished only to their own patients as part of the physical or occupational therapy service.

Note: OTS orthotics are not included in the first phase of competitive bidding, this exception is not relevant in the first phase of the DMEPOS Competitive Bidding program beginning July1, 2008.

Additional Information

CMS has released a new Chapter 36 of the Medicare Claims Processing Manual. This chapter is contained in CR5978 and is amended by CR6119 and contains the initial, official manual instructions for this program. The MLN Matters articles related to CR5978 and CR6119 are available at

<http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM5978.pdf> and <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM6119.pdf> on the CMS website.

If you have concerns, questions, or complaints about the quality of an item or the service that a patient received from a contract supplier please call the Competitive Bidding Program helpline at 1-877-577-5331.

For more information about the Competitive Bidding Program, call 1-877-577-5331. TTY users call 1-877-486-2048. Stay tuned for additional articles in this series. You can also visit <http://www.cms.hhs.gov/DMEPOSCompetitiveBid/> on the CMS website for more details.

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